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Right of peoples to self-determination

**Use of mercenaries as a means of violating human rights
and impeding the exercise of the right of peoples to
self-determination**

Note by the Secretary-General**

The Secretary-General has the honour to transmit to the members of the General Assembly, in accordance with General Assembly resolution 54/151 of 17 December 1999, the report prepared by Mr. Enrique Bernales Ballesteros (Peru), Special Rapporteur on the question of the use of mercenaries.

* A/55/150 and Corr.1 and 2.

** In accordance with para. 1, sect. C, of General Assembly resolution 54/248, this report is being submitted on 30 August 2000 in order to contain as much updated information as possible.



**Report on the question of the use of mercenaries as a means
of violating human rights and impeding the exercise of the
right of peoples to self-determination, submitted by the
Special Rapporteur of the Commission on Human Rights**

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I. Introduction

1. During its fifty-fourth session, the General Assembly adopted resolution 54/151 of 17 December 1999 by which, *inter alia*, it decided to consider at its fifty-fifth session the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination. It requested the Special Rapporteur to report his findings on the question, with specific recommendations, to the General Assembly at its fifty-fifth session.

2. The General Assembly recognized that armed conflict, terrorism, arms trafficking and covert operations by third Powers, *inter alia*, encourage the demand for mercenaries on the global market and reaffirmed that the recruitment, use, financing and training of mercenaries are causes for grave concern to all States and violate the purposes and principles enshrined in the Charter of the United Nations. The Assembly urged all States to take the necessary steps and to exercise the utmost vigilance against the menace posed by the activities of mercenaries and to take the necessary legislative measures to ensure that their territories and other territories under their control, as well as their nationals, are not used for the recruitment, assembly, financing, training and transit of mercenaries for the planning of activities designed to destabilize or overthrow the Government of any State or threaten the territorial integrity and political unity of sovereign States, or to promote secession or to fight the national liberation movements struggling against colonial or other forms of alien domination or occupation.

3. The General Assembly invited States to investigate the possibility of mercenary involvement whenever criminal acts of a terrorist nature occur in their territories and to cooperate fully with the Special Rapporteur in the fulfilment of his mandate, and welcomed the cooperation extended by those countries that had invited the Special Rapporteur.

4. The General Assembly requested the Secretary-General to invite Governments to make proposals towards a clearer legal definition of mercenaries, and, in this regard, requested the United Nations High Commissioner for Human Rights to convene expert meetings to study and update the international legislation in force and to propose recommendations for a clearer legal definition of mercenaries that would

allow for more efficient prevention and punishment of mercenary activities. It also requested the Office of the United Nations High Commissioner for Human Rights, as a matter of priority to be programmed in its immediate activities, to publicize the adverse effects of the activities of mercenaries on the right to self-determination and, when requested and where necessary, to render advisory services to States that are affected by the activities of mercenaries.

5. In this regard, the Special Rapporteur wishes to report that he is continuing to work on the analysis of the question of mercenaries, with a view to submitting proposals to the General Assembly on a clearer legal definition of mercenaries. At the same time, he notes that he has not yet been able to avail himself of the support that would be forthcoming from an expert meeting, which, by studying international legislation and the status of the question, could formulate suggestions with regard to the legal definition of mercenaries. It is to be hoped that the arrangements for the holding of this meeting, which has been decided on by the Assembly and for which financing is available, will be expedited.

6. The General Assembly welcomed the adoption by some States of legislation that restricts the recruitment, assembly, financing, training and transit of mercenaries and called upon all States that had not yet done so to consider taking the necessary action to sign or to ratify the International Convention against the Recruitment, Use, Financing and Training of Mercenaries.

7. At its fifty-sixth session, the Commission on Human Rights expressed itself in similar terms by adopting resolution 2000/3 of 7 April 2000, which, *inter alia*, reiterates the importance of a clearer legal definition of mercenaries and reaffirms that the use of mercenaries and their recruitment, financing and training are causes for grave concern to all States and violate the purposes and principles enshrined in the Charter of the United Nations.

8. Accordingly, and pursuant to the above-mentioned resolution 54/151, the Special Rapporteur has the honour to submit this report to the General Assembly for consideration at its fifty-fifth session.

II. Activities of the Special Rapporteur

A. Implementation of the programme of activities

9. The Special Rapporteur visited Cuba from 12 to 17 September 1999, in response to an invitation from the Government of that country. During his visit he was able to meet with senior officials of the Cuban Government, eminent academics and experts, specialized legal scholars, representatives of the tourism sector and members of non-governmental organizations. An account of the visit is contained in chapter II of the report submitted by the Special Rapporteur to the Commission on Human Rights (E/CN.4/2000/14 and Corr.1). The Special Rapporteur reiterates his appreciation to the Cuban authorities for their invitation and for the cooperation provided to him during his mission. He notes further that he is continuing to follow up the matter in the interests of ensuring that the actions in this case, which affected the self-determination of a people and the lives and physical integrity of individuals and caused serious economic harm, should not go unpunished.

10. The Special Rapporteur submitted his report to the Commission on Human Rights on 22 March 2000. While in Geneva, the Special Rapporteur held consultations with representatives of various States and met with members of non-governmental organizations. He also held coordination meetings with the Activities and Programmes Branch of the Office of the United Nations High Commissioner for Human Rights.

11. The Special Rapporteur returned to Geneva on two occasions, from 5 to 9 June 2000 and from 21 to 24 August 2000, to hold various consultations, take part in the 7th meeting of special rapporteurs and special representatives, independent experts and chairmen of working groups of the Commission on Human Rights, and draft this report.

B. Correspondence

12. Pursuant to General Assembly resolution 54/151 and Commission on Human Rights resolution 2000/3, the Special Rapporteur sent a communication on 16 June 2000 to all States Members of the Organization, requesting the following: (a) information on the

possible existence of any recent mercenary activities; (b) participation by nationals of their country as mercenaries in committing acts against the self-determination and sovereignty of other States; (c) information on the possible existence of mercenary activities in the territory of another State; (d) information on the possible participation of mercenaries in committing internationally wrongful acts; (e) information on domestic legislation and on treaties outlawing mercenary activities; (f) suggestions by their Governments for enhancing the international treatment of the topic of outlawing mercenary activities; and, lastly, (g) information and views on private security service and military advice and training companies.

13. By a letter dated 19 June 2000, the Ambassador of Antigua and Barbuda to the United Kingdom of Great Britain and Northern Ireland, Mr. Ronald Sanders, transmitted the following reply by his Government to the questionnaire sent by the Special Rapporteur:

"Thank you for your letter of 16 June 2000 concerning information related to General Assembly resolution 54/151 and Commission on Human Rights resolution 2000/3. The answers to the questions are as follows: (a) None; (b) None; (c) None; (d) None; (e) Antigua and Barbuda is not a signatory to the Convention; (f) My Government has insufficient experience in the area of mercenaries to offer any constructive suggestions; (g) No information. We have no views on this matter that could be considered informed or knowledgeable.

"Of course, in relation to item (c), actions that affect the sovereignty of a country, the exercise of the right of its people to self-determination and its enjoyment of human rights are not limited to mercenary activities in the territory of another State. States, particularly small ones, regularly experience actions from larger and more powerful States which affect their sovereignty and the exercise of their right to self-determination. Equally, the activities of some multinational companies (not even large ones) also sometimes affect the sovereignty of small countries and the enjoyment of human rights.

"If anything, therefore, the two resolutions to which we are asked to respond are narrow in

their scope when they focus only on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination."

14. By note verbale No. 656 of 7 July 2000, the Permanent Mission of Cuba to the United Nations Office at Geneva replied to the request for information from the Special Rapporteur, as follows:

"The Government of the Republic of Cuba attaches immense importance to the efforts made in the framework of the United Nations system with a view to condemning and combating the recruitment, use, financing and training of mercenaries. Particularly important is the monitoring by the Commission on Human Rights of the adverse impact of mercenary activities on the enjoyment of all human rights, especially the right of peoples to self-determination. The adoption of the 1989 Convention by means of General Assembly resolution 44/34 was a landmark in the development of an international legal framework for combating mercenary activities, despite any limitations which that instrument may have.

"Cuba considers that there is a fundamental need to promote ratification of the 1989 Convention by States that have not yet done so in order to permit its entry into force, and is itself immersed in the required domestic procedures with a view to the possible ratification of that instrument. Cuba has previously transmitted to the Office of the United Nations High Commissioner for Human Rights its substantive contributions and views regarding a possible strengthening of the international legislative framework for combating the use of mercenaries. Some of these views are reiterated in this note.

"Nevertheless, the Government of the Republic of Cuba wishes to take this opportunity, above all, to express its profound regret that the Office of the United Nations High Commissioner for Human Rights has not convened an expert meeting to examine the question of the progressive development of the international legal framework for combating mercenary activities in all their forms and manifestations, as decided on by the General Assembly at its fifty-

fourth session and reaffirmed by the Commission on Human Rights at its fifty-sixth session.

"Convinced that the time-frame established in Commission on Human Rights resolution 2000/3 for the convening of the aforesaid expert meeting will be complied with, the Cuban Government informs the Office of the United Nations High Commissioner of its special interest in nominating a Cuban expert to participate in that meeting.

"Mercenary activities were defined in the Cuban Penal Code of 1979. The definition of such activities was reproduced verbatim in article 119 of the Penal Code of 1998, currently in force. Cuba considers that the definition of mercenaries set out in article 1 of the 1989 Convention does not take sufficient account of the various manifestations of mercenary activity and, furthermore, lays down excessive requirements for characterizing mercenaries as such, essentially because it requires that those manifestations appear concurrently. The Cuban Government has stated that it is inappropriate to use as a criterion for the definition of mercenaries the amount of remuneration received for carrying out mercenary activities.

"Moreover, to exclude from the definition of mercenaries nationals who, in exchange for remuneration, act against the interests of their own country in the service of a foreign Power or interest particularly weakens its scope. Cuba has recently made specific proposals concerning a possible reformulation of the concept of mercenaries which remain fully relevant.

"The Government of the Republic of Cuba attaches special significance to the discharge of the mandate of the Special Rapporteur of the Commission on the question of mercenaries and is therefore doing its utmost to intensify its cooperation with Mr. Enrique Bernales Ballesteros, who has been acting in that capacity with great professionalism.

"In response to an invitation from the Cuban Government, Mr. Bernales Ballesteros paid a fruitful visit to the country, during which he was presented with abundant testimony and documentary evidence concerning the mercenary activities carried out against Cuba in recent years.

The evidence directly involves organizations and persons residing in countries geographically close to Cuba, whence they operate; accordingly, the Cuban Government calls upon the Governments of the States concerned, particularly the Government of the United States of America, to consider the possibility of inviting the Special Rapporteur to visit them."

15. By note verbale dated 31 July 2000, the Permanent Mission of Pakistan to the United Nations Office at Geneva transmitted to the Special Rapporteur the following comments by the Government of Pakistan on resolutions 54/151 of the General Assembly and 2000/3 of the Commission on Human Rights:

"(a) The Government of Pakistan believes that mercenary activities pose a serious obstacle to the realization of people's right to self-determination;

"(b) The activities of mercenaries impede the realization of people's right to self-determination on two distinct levels: (i) by subverting the authority of the institutions of the State(s) to exercise full control over their resources and how they choose to dispose of them, among other things by terrorizing the population and associating with criminal elements/organized crime cartels; and (ii) preventing people from determining their political destiny and the future affiliation of their State;

"(c) Over the years, the Special Rapporteur on the question of the use of mercenaries has focused on the first aspect of mercenary activities. The second aspect has not received sufficient attention. Indeed, at times there appears a certain mixing up of these two very distinct dimensions of the same problem. The reports of the Special Rapporteur sometimes read as if they disapprove of the legitimate actions of peoples whose right of self-determination is recognized, inter alia, through United Nations Security Council resolutions, as 'mercenary activities';

"(d) Nothing could be further from the truth. Mercenaries and freedom fighters have nothing in common. Mercenaries act to impede the realization of peoples' right to self-determination. Freedom fighters act to promote

and realize it by opposing foreign occupation and aggression;

"(e) According to the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, the establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people (...) Every State has the duty to refrain from any forcible action which deprives peoples referred to above in the elaboration of the present principle of their right to self-determination and freedom and independence. In their actions against, and resistance to, such forcible action in pursuit of the exercise of their right to self-determination, such people are entitled to seek and to receive support in accordance with the purposes and principles of the Charter;

"(f) Those engaged in denying the legitimate and established right to self-determination of a people in contravention of the above-mentioned principles have always found it expedient to label such peoples as terrorists. In such conditions, State organs are themselves engaged in systematic State terrorism against the occupied people. To further confuse the issue, such States also frequently label persons struggling for their right to self-determination as mercenaries, while systematically engaging the services of mercenaries to counter the freedom struggle;

"(g) Such mercenaries are given titles such as 'counter-militants', while in reality they fit the classic description of mercenaries. Their motive for participation in hostilities is financial and material gain. They generally render the following services: (i) inform on people believed to be sympathetic to the freedom struggle; (ii) harass the subject population; (iii) intimidate human rights defenders, particularly lawyers, journalists, academics and the political leadership of the subject people; (iv) carry out acts of, inter alia, torture, enforced and involuntary disappearances, extrajudicial executions, rape and

molestation of women at the behest of the occupying power;

"(h) The rewards these mercenaries receive are: (i) financial gratification and material benefits; (ii) permission to run protection rackets as long as these do not interfere with the activities of the occupying Power; and (iii) employment in government service, including in military and paramilitary outfits. Such activities deserve the condemnation of the international community as posing one of the most serious obstacles to the realization of peoples right to self-determination."

16. In response to the observations contained in the communication from the Government of Pakistan, the Special Rapporteur notes that his reports have always referred to mercenary activity as a criminal act that prevents or impedes the exercise by peoples of their right to self-determination and that such activity is also a violation of human rights. This view is consistent with the nature and scope of the mandate entrusted to him in 1987 by the United Nations Commission on Human Rights. More than once in his reports, the Special Rapporteur has mentioned the names of national liberation movements engaged in a legitimate struggle for the self-determination of their peoples and which have been recognized as such by the United Nations. He also denounced the criminal acts committed by mercenaries against members of liberation movements. He referred, moreover, to the means used by mercenaries to obstruct or overthrow a legitimate constitutional Government, thereby affecting the exercise by the people concerned of their right to self-determination.

17. Lastly, the Special Rapporteur has adhered to the current international norms for defining a mercenary. A person fighting in his country for a legitimate cause of liberation, or in a foreign territory but within the framework of international agreements, is not a mercenary. On the other hand, a soldier who sells his professional skills and is recruited, trained and financed to participate in the internal affairs or armed conflicts of a country different from his own is a mercenary, even though he may claim certain attributes in order to be accepted as a freedom fighter.

18. In his letter dated 7 August 2000, Mr. Rusudan Beridze, Deputy Secretary for Human Rights Questions of the National Security Council of Georgia,

transmitted to the Special Rapporteur the following response to the questionnaire sent to all Governments of States Members of the United Nations:

"(a) On the territory of Georgia we have no mercenary activities except in Abkhazia (Georgia), which is not under the jurisdiction of Georgia and we have no reliable information on the situation in this region. It should be mentioned that, during the conflict in Abkhazia, several thousand mercenaries from the Russian Federation and countries of the Near East participated in the armed conflict. Some of them are still living in Abkhazia, the separatist government having awarded them the houses of expelled Georgians;

"(b) We have no examples of the participation of Georgian citizens as mercenaries in any country;

"(c) Mercenary activities in North Caucasus, especially in Chechnya (the Russian Federation), may be a threat to the security of Georgia;

"(d) There have been acts of abduction of persons and drug trafficking from Chechnya;

"(e) The Parliament of Georgia, on 3 May 1995, ratified the International Convention against the Recruitment, Use, Financing and Training of Mercenaries of 4 December 1989;

"(f) We suppose that it would be desirable to establish under the auspices of the United Nations a new international service aimed at the revelation and neutralization of organizations and funds promoting and financing mercenary activities;

"(g) Peacekeeping forces of the Commonwealth of Independent States (CIS) (in fact military forces of the Russian Federation) have been deployed since June 1994 on both sides of the river Enguri. Their mandate includes the maintenance of the Agreement on a Ceasefire and Separation of Forces (S/1994/583 and Corr.1, annex I) in the conflict of Abkhazia (Georgia). Peacekeeping forces unfortunately could not protect the civilian population from the violence in the Gali region, where more than 1,500 people have been killed. Despite this fact, the

peacekeeping forces have managed to fulfil their main function."

19. Following up on his official mission to Cuba in September 1999, the Special Rapporteur transmitted the following letters:

(a) Letter dated 16 June 2000 addressed to Mr. Gabriel Orellana Rojas, Minister for Foreign Affairs of Guatemala, requesting official information on the allegations concerning the use of Guatemalan territory for planning a number of attacks against tourist facilities in Havana and for the recruitment and training of several of the perpetrators of the attacks. It may be recalled that Francisco Antonio Chávez Abarca, alias Manuel González, one of the presumed masterminds, is alleged to have recruited Raúl Ernesto Cruz León and three Guatemalan citizens, Nader Kamal Musallam Barakat, María Elena González Meza de Fernández y Jazid Iván Fernández Mendoza;

(b) Letter dated 16 June 2000 addressed to Ms. María Eugenia Brizuela de Ávila, Minister for Foreign Affairs of El Salvador, requesting official information on the use of the territory of El Salvador for the planning of a number of attacks against tourist facilities in Havana and for the recruitment and training of some of the perpetrators of the attacks. As the report of the Special Rapporteur to the Commission on Human Rights states, Luis Posada Carriles, alias Ignacio Medina, is alleged to have recruited Otto René Rodríguez Llerena, a citizen of El Salvador;

(c) Letter dated 6 July 2000 addressed to Ms. Madeleine Korbelt Albright, Secretary of State of the United States of America, requesting official information on a number of organizations of Cuban origin formed and operating in Miami, Florida, with which several of the masterminds of the attacks against the tourist facilities in Havana are alleged to be linked. Information is requested specifically about any investigations that might have been conducted into the participation of members of these organizations in the recruitment, hiring, financing and use of mercenaries to carry out acts of sabotage and terrorism in Cuba.

20. By letter dated 28 July 2000, Mr. Víctor Manuel Lagos Pizzati, Permanent Representative of El Salvador to the United Nations Office at Geneva, informed the Special Rapporteur that he had received the following information from the Salvadoran authorities:

"First of all, when the events occurred, the National Civil Police of El Salvador opened an investigation into the case. However, the lack of information and of international cooperation hampered the investigations and made it difficult to confirm information and to take steps to clarify the acts that were alleged. Had there been cooperation from other Governments and had information been provided on the case, investigations would certainly have been carried out and the persons identified as suspects arrested and brought before the appropriate judicial bodies in order to initiate legal proceedings.

"With respect to Luis Posada Carriles, the Ministry of the Interior has stated that the immigration control statistics on entries and departures of nationals and foreigners showed that it has been more than 10 years since the person in question last entered El Salvador. As for Francisco Chávez Abarca, no court or administrative orders are pending against him, and his freedom to enter or leave the country cannot therefore be legally restricted. Moreover, no travel restriction exists in the immigration files against any person by the name of Ignacio Medina, although a departure ban is in force against persons with the name Manuel González. This ban will be enforced if such a person is found attempting to leave the country.

"The Government of El Salvador reiterates its firm rejection and condemnation of any terrorist acts, particularly those related to illicit mercenary activities, that clearly violate human rights, the right of peoples to self-determination and the stability of Governments, and it intends to conduct the necessary investigations, provided that evidence is presented to support such investigations, with a view to clearing up the case and enabling the appropriate legal proceedings to be instituted."

21. In another communication of the same date, the Permanent Representative of El Salvador to the United Nations Office at Geneva wrote as follows:

"El Salvador has stated that it is opposed to mercenary activities, whatever their form or the geographic areas in which they occur, because they impede the effective enjoyment of human rights, the stability of Governments and the

economic development of peoples. Moreover, El Salvador's rejection and condemnation of mercenary activities have a historical motive, because during its armed conflict the country was itself confronted with the involvement of foreigners, who joined with irregular groups in arms trafficking and in committing acts of sabotage and terrorism.

"In Central America, within the framework of the 'Esquipulas II' regional peace process, the Presidents reiterated their commitment to prevent the use of their territory by persons, organizations or groups attempting to destabilize other States, and not to provide or permit the supply of military or logistic support to them. These commitments were set out in the Framework Treaty on Democratic Security in Central America, signed on 15 December 1995 (A/51/67, annex II).

"In the United Nations, the Government of El Salvador has been a longstanding sponsor and supporter of the important resolutions adopted by the General Assembly and the Commission on Human Rights on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination:

"(a) At the institutional level, no information is available on the possible existence of any recent mercenary activities in El Salvador (recruitment, financing, training, assembly, transit or use of mercenaries);

"(b) As for available information on the participation by nationals of El Salvador as mercenaries in committing acts against the sovereignty of other States, acts against the exercise of the right of other peoples to self-determination or in human rights violations, the only case is the so-called 'Cruz León' case;

"(c) No information is available either on the possible existence of mercenary activities in the territory of another State from which actions are carried out that affect or potentially affect the sovereignty of El Salvador, the exercise of the right of the people to self-determination and their enjoyment of human rights;

"(d) With regard to the possible participation of mercenaries in committing internationally wrongful acts such as terrorist attacks, forming and supporting death squads and paramilitary organizations, trafficking in and abduction of persons, drug trafficking, the arms traffic and contraband, no information is available, as was mentioned in subparagraph (b) above;

"(e) Nor do we have any evidence, information or views on private security service and military advice and training companies offering their services to Governments in order to intervene in internal armed conflicts with the assistance of mercenary military professionals for the purpose of improving the military effectiveness of government forces, in exchange for cash benefits and shares in the investments and economic ventures of the country in which they operate.

"The structure of the National Civil Police of El Salvador includes operational units capable of reacting to any possible mercenary activities in the country. One of these units is the Office for the Coordination of Investigations, of which the Criminal Investigation Division is a part. The Criminal Investigation Division in turn includes a Department for the Investigation of Organized Crime (DICO) which, together with the International Criminal Police Organization (INTERPOL) office in El Salvador, works to suppress organized crime by coordinating its activities with other countries. To this end, information has been shared with other Central American countries on possible criminal conduct and actions in the region of Central America which may show a certain degree of organization.

"The Office for the Coordination of Investigations also has a Borders Division, whose purpose is to help ensure the proper management of resources for preventing and combating violations of the legislation governing travel into and out of the country, by air, land or sea. This Division carried out 28,506 operations during the period from June 1999 to May 2000, including immigration controls, controls of illegal persons, deported immigrants and vehicles, preventive patrols and detentions. As a result, 1,761 illegal immigrants were located and a total of 1,759

persons deported for being in the country illegally.

"All of these actions have helped to maintain the security of citizens both in the border regions and in the country's interior by preventing illegal activities from being carried out.

"The National Civil Police has other units such as the Drug Control Division, the Technical and Scientific Police and the Kidnap Prevention Department that can also take action to suppress mercenary activities.

"In addition, the National Civil Police has an Office for Coordination in Specialized Areas, which includes the Division of Arms and Explosives, the Airborne Police Group, the Maritime Police Group and the Police Reaction Group. All of these specialized units are capable of preventing mercenary activities from being carried out in our country and of intervening directly when necessary."

22. In its note verbale dated 4 August 2000, the Permanent Mission of the United States of America to the United Nations Office at Geneva transmitted the reply of Madeleine Korbelt Albright, Secretary of State of the United States of America, to the Special Rapporteur's request of 6 July 2000 for information. The reply reads as follows:

"Thank you for your letter of 6 July regarding your report to the United Nations General Assembly and the Commission on Human Rights on the use of mercenaries. We forwarded your questions regarding alleged involvement of organizations in the United States in supporting terrorist acts in Cuba to the Federal Bureau of Investigation (FBI).

"The FBI has a pending investigation into these allegations. It is their policy not to discuss the status of pending investigations, so the information we can provide you at this time is extremely limited.

"Representatives of the FBI met with representatives of the Cuban Government on two occasions concerning these allegations. On 28 October 1999, the FBI sent a request through the United States Department of State to the Cuban Government for their assistance related to the

investigation. To date, the Cuban Government has not responded.

"Thank you for your evident interest in producing a fair and balanced report. If we may be of further assistance, please do not hesitate to contact us again."

23. The Special Rapporteur also wrote to the Governments of Afghanistan and the Russian Federation in letters dated 8 June 2000, requesting from them, respectively, official information on the presence of foreign combatants and possibly of mercenaries in Afghan territory controlled by the Taliban and in Chechnya. No response has been received to these communications. Non-government sources have informed the Special Rapporteur that foreigners recruited mainly in Islamic countries are allegedly being trained in Afghan territory in the use of arms and explosives. After receiving training, they are reportedly being sent to fight in the north of Afghanistan.

24. The Special Rapporteur is giving careful consideration to the substantive notes sent by the Governments of Antigua and Barbuda, Cuba, El Salvador, Georgia, Pakistan and the United States of America. Each of these notes contains elements that are very useful for his mandate and provide material that can be used to expand and clarify various aspects of mercenarism, with regard to both its legal definition and its broader characterization in situations involving mercenaries.

25. During the reporting period, the Special Rapporteur continued to receive the cooperation of various non-governmental organizations, including, in particular, Amnesty International of the United Kingdom, Human Rights Watch and International Alert. He also received communications from the Bahrain Human Rights Organization, in Copenhagen; the Muttahida Qaumi Movement (MQM), in the United Kingdom; the Royal Institute of International Affairs (Chatham House), in London; and the Organization for Defending Victims of Violence, in Tehran. The Special Rapporteur expresses appreciation for the cooperation of these non-governmental organizations in the fulfilment of his mandate.

III. Mercenary activities in Africa

26. From the outset, this mandate has been linked to the palpable deterioration of the situation in some African countries, whose political problems or disputes with neighbouring countries have resulted in armed conflicts. As these conflicts developed, one or all sides to the conflict have hired mercenaries, who have offered themselves for hire to reap monetary gains for committing lethal acts of violence. This mercenary presence is an established fact in various African conflicts and has led to atrocities and the prolongation of war. Although mercenarism is not exclusive to African countries, Africa is the continent where it is most persistent and most seriously damaging. Many armed conflicts on the continent stem from chronic political instability and the presence of valuable natural resources, which outsiders seek to control by encouraging and arming allies within the country to enable them to take power. Subsequently, mercenaries with individual military skills, or, in a more sophisticated form, private military security companies that use small, well-organized mercenary armies to pacify the country have become involved.

27. In some places, conflicts have been ended by peace agreements, which are not always firm and lasting, while in other areas the armed confrontation has never ceased, nor has the intervention of mercenaries, arms merchants and traffickers whose sole interest is to exploit the natural wealth of Africa. Thus, bearing in mind that the dialectic of specific conflicts differs from one situation to another, the defence of life, viability, self-determination and respect for development throughout the African continent should be of concern as an overall policy. Mercenarism has been and remains one of the most negative factors in this scenario. The situation in Sierra Leone, which the Special Rapporteur has dealt with in previous reports, continues to be especially grave, owing to the presence of mercenaries who have become involved in the conflict in various ways. As is well known, the legitimate Government of President Ahmed Tejan Kabbah signed a peace agreement in Lomé with Foday Sankoh's Revolutionary United Front (RUF) on 7 July 1999 (S/1999/777, annex). In his previous report to the General Assembly, the Special Rapporteur pointed out that the agreement really represents a power-sharing deal, providing for an amnesty that literally guarantees impunity for the perpetrators of serious violations of human rights and of international humanitarian law

since 1991. Prevailing international law, however, prohibits amnesties that cover crimes against humanity, war crimes or acts of genocide. The peace agreement says nothing, moreover, about the international security companies that took part in the conflict and through which mercenaries were introduced.

28. Some RUF troops complied with the agreement by surrendering their weapons and demobilizing, for which they each received US\$ 150. Most, however, far from demobilizing and assembling in given areas, remained armed in diamond-producing regions of the country. Later, RUF elements kidnapped hundreds of soldiers of the United Nations Mission in Sierra Leone (UNAMSIL) and captured valuable weaponry, including tanks. Their control of the diamond mines continues to enable them to finance their activities, and the crimes they have committed, including the worst systematic and massive mutilations practised anywhere in the world, have yet to be punished. The international community, particularly those countries that are involved in the diamond trade, should unreservedly support the strengthening of democracy and human rights in Sierra Leone. At the same time, such countries should avoid committing any act or making any concession or omission that might involve them in the responsibility for the terrible events occurring in that country. In any case, the tragedy of Sierra Leone again demonstrates that it is wrong to think that private military security companies help to ensure the governability of the countries where they operate. The firm Executive Outcomes operated in Sierra Leone from May 1995 to January 1997 and resolved nothing, as can be seen by what has happened in the country since 1997. The Special Rapporteur considers that regional security mechanisms should be strengthened to enable them to help promote democracy, respect for the rules of international humanitarian law and the effective enjoyment of human rights.

29. After more than two years of armed conflict, the situation in the Congo is beginning to show some signs of hope, two of which are the acceptance of the mediation offered by the President of Gabon, Omar Bongo, and the opening of a national dialogue between the government party and 16 opposition parties, most of whose leaders are still in exile. The Government of President Denis Sassou Nguesso has ordered the demobilization and dissolution of the militias. The Special Rapporteur expresses his good wishes for the success of this national dialogue and the hope that, in a

context of reconciliation, all isolated militia activities will cease and an impartial investigation can be made of all reports of human rights violations during the conflict.

30. In the Democratic Republic of the Congo, despite a number of attempts to negotiate peace and despite the ceasefire agreement of 10 July 1999 (S/1999/815, annex), the armed conflict continues in various parts of the country, mainly in the regions of North and South Kivu. Recently, a meeting convened on 13 August 2000 in Lusaka in support of the ceasefire resulted in failure. Armies opposing the Government of President Laurent Kabila, such as the Congolese Rally for Democracy (RCD) and the Movement for the Liberation of Congo (MLC), are supported by troops from Angola, Namibia and Zimbabwe. In this connection, the presence of mercenary combatants has been reported, whose primary interest seems to be the Mbuji-Mayi region, the diamond capital of the province of West Kasai.

31. The Special Rapporteur wishes to refer once again to the worsening of the conflict in Angola. Hundreds of thousands of deaths have occurred during this long war, and a million people, representing 10 per cent of the country's population, have been displaced internally. Clearly, the União Nacional para a Independência Total de Angola (UNITA) has stopped complying with the peace agreements it signed in Lusaka (S/22609, annex) and has unilaterally resumed armed hostilities against the Government. The reason for this rebellion appears to be the unwillingness of UNITA to surrender its weapons and withdraw from the territories under the control of its armed organization. It is estimated that this control has enabled UNITA to generate revenues of some \$3 billion to \$4 billion through the diamond trade. It seems that some major Western firms have benefited from such transactions. Despite the embargo imposed by the United Nations, weapons continue to reach UNITA by various alternative routes used illegally by the latter. It has been reported that the territories of Burkina Faso, Congo, the Democratic Republic of the Congo, Togo, South Africa and Zambia are being used to evade the arms embargo imposed against UNITA by the Security Council in its resolution 864 (1993) of 15 September 1993. Other sources state that UNITA continues not only to acquire modern, sophisticated weapons, but also to hire Eastern European mercenaries to strengthen its military capacity. In brief,

the conflict continues; the embargo imposed against UNITA by the United Nations is being violated; and peace is far from being achieved in Angola.

IV. Current status of mercenary activities

A. Legal definition

32. The General Assembly, in its resolution 54/151 of 17 December 1999 and earlier resolutions, stressed the need for a better and more precise legal definition of mercenaries that would make for more efficient prevention and punishment of mercenary activities. In this connection, it requested Governments to make proposals towards a clearer legal definition of mercenaries and requested the Office of the United Nations High Commissioner for Human Rights to convene expert meetings to study and update the international legislation in force and to propose recommendations. The Special Rapporteur is concerned about this topic as well. Accordingly, he has repeatedly requested Member States to submit relevant information, suggestions, comments and proposals. The Special Rapporteur also looks forward to the expert meetings, in order to incorporate the thinking and analysis produced at that level into an improved, updated conceptual management of mercenarism.

33. Although the general focus of the replies of Member States has been to provide the requested information on mercenary activities, all have agreed in their condemnation of mercenaries, calling them agents that threaten self-determination, undermine sovereignty and, through their own actions, represent natural subversives that endanger life, peace, political stability and the natural resources of the countries where they become involved. The Special Rapporteur considers it significant that no State has attempted to justify mercenary activities in any way in its replies to his communications or suggested criteria to distinguish between prohibited and permitted mercenaries. While in the past the so-called undercover operations of some Powers used mercenaries, it would seem that this is no longer an acceptable method in the current context of globalization.

34. This international consensus on the condemnation of mercenary activities is a prime factor to be considered in an effort to update the legal definition.

The Special Rapporteur has noted the same consensus with regard to the use of mercenaries by private companies that offer military security on the international market. The view that their activities should be regulated and monitored does not hold that such companies should be eliminated, nor that the State should have an exclusive monopoly in matters of security; it does affirm, however, that these companies should be prevented from becoming directly involved in armed conflicts and intervening in them by hiring and forming battalions of mercenaries to take part in warfare.

35. The currently accepted meaning or use of the term mercenary is primarily focused on including in this rubric professional services that are paid to recruit soldiers to intervene in an armed conflict in a country other than their own. The concept thus appears to be linked to self-determination. Nonetheless, the hiring of this type of professional services extends to other illicit activities, such as arms trafficking, drug trafficking, terrorism, acts of destabilization of legitimate Governments and acts to take forcible control of valuable natural resources. None of these aspects falls strictly under article 47 of Additional Protocol I to the Geneva Conventions. Not all these types of activities are carried out by mercenaries; some, however, are. A revision of the legal definition of mercenaries should embody a concept that is broad enough to take into account the various types of crimes that are included in mercenary activities.

36. Mercenaries are usually, or have been, soldiers, combatants or, more frequently, members of special units and have experience with sophisticated weapons; this applies particularly to those recruited to take part in combat and to train those who are to make up battalions, columns or command units. The mere fact that it is a Government that recruits mercenaries or hires companies that recruit mercenaries, either in its own defence or to provide reinforcements in armed conflicts, does not make such actions any less illegal or illegitimate. Governments are authorized to operate solely under the Constitution and the international treaties to which they are parties. This point of view should be taken into account in a new legal definition of mercenaries.

37. The aim of the rules of customary international and treaty law is, in essence, to combat mercenary acts in the broad sense of the buying and selling of military services that are not subject to the prevailing

humanitarian standards applying to armed conflicts, and that are likely to lead to war crimes and human rights violations. If nationals of the affected country are used, they cannot, strictly speaking, be considered mercenaries, but, on the part of those recruiting them, the aim of using them as mercenaries is objectively undeniable, as is the willingness of such nationals to accept a relationship that turns them into mercenaries. Therefore, the requirement to be a non-national of the country in which the mercenary becomes involved should also be reviewed, to give greater weight in the definition to the nature and purpose of the illicit act to which an agent is paid to be associated. In brief, the information summarized here, although it is not complete, demonstrates the need to establish a legal definition of mercenaries that will be efficient and applicable.

B. Operational model

38. Whatever their origin, mercenaries are a danger to the peoples who are subjected to their activities. The mercenary bears criminal responsibility; however, those who recruited, trained, financed and contracted for mercenaries are also implicated. The condemnation by the General Assembly should be directed not only at mercenary soldiers but also at those who recruited and hired them. In this respect, the Special Rapporteur differs with those who maintain that mercenary activities are marginal and do not merit the continued concern of the Assembly. This point of view does not consider the reality of the peoples affected and does not delve into the complex nature of mercenary activities, nor does it pay heed to the disastrous consequences of tolerating such activity.

39. The Special Rapporteur cannot remain silent about this view, because the empirical evidence indicates that mercenarism works against peace, political stability, respect for the rule of law and democracy, the capacity to exploit natural resources rationally, the harmonious integration of the population and efforts to redistribute wealth to prevent extreme poverty. When all these positive factors come together, the risk of mercenary activity is minimal. On the contrary, when those factors are missing or are doubtful, scarce, intermittent or conflict-ridden, or run counter to destabilizing interests, the risk of mercenary involvement grows.

40. This is true because violence and lust for power are likely to lead to some type of connection to mercenaries, or because third Powers, who do not wish to be seen as directly involved or to be accused of interventionism, chose this path to gain some type of advantage. Mercenaries can be recruited, trained and financed in strong, stable countries, but they are used mainly in countries that are afflicted by political violence, internal armed conflict, rebellion or insurgency and lack the financial and technological capacity to exploit their natural resources on an industrial scale.

41. The reputed greater efficiency of military units formed, led or trained by mercenaries is an unacceptable argument. It took root at a stage when State military forces had to be eliminated or significantly reduced, opening the doors to mercenary organizations which took charge both of maintaining internal order and protecting a country's borders.

C. Private security and military assistance companies operating internationally

42. The Special Rapporteur continues to receive and classify reports referring to the recruitment, contracting and use of mercenaries by private companies that offer military security services on the international market. Some of these companies are involved in armed conflicts, providing training to combat forces or pilots for troop transport and offering specialized technical services; on occasion, they actively participate in combat situations.

43. The concern does not come from the private nature of these companies. The private sector has traditionally contributed to the development of military science and technology, and their contributions have been particularly useful in the areas of basic and applied scientific research, technological innovation, development of new strategies, advisory and project evaluation services, and others. The problem arises when those companies enter into contracts to recruit, hire and use mercenaries and become involved in armed conflicts to such an extreme that they supplant the State and its armed security forces.

44. While private companies play an important role in the area of security, there are certain limits that should not be exceeded. They should not participate actively in armed conflicts, nor recruit and hire

mercenaries, much less attempt to replace the State in defending national sovereignty, preserving the right of self-determination, protecting external borders or maintaining public order.

45. The Special Rapporteur believes that the apparent connection between an increase in mercenary activity and the well-known inadequacy of international rules in that area should be examined. Moreover, the trend towards concealing mercenarism behind modern private companies could be due to the failure of international law to predict the new operational modalities for mercenary activities. The system of international norms must be perfected to counter the development of new criminal methods.

46. Greater rigour and precision must be achieved in concepts and definitions, avoiding generalizations and ensuring clear legal regulations; private activity in the area of security and military advice and assistance should be monitored by a specialized public international institution.

47. Examples can be found on the contemporary international scene of States debilitated by long-term armed internal conflict and Governments that have serious difficulties in ensuring the maintenance of public order or in guaranteeing the security of their citizens. No matter how serious the situation they face, those States cannot renounce their fundamental responsibilities and transfer them to private entities. The international community cannot allow either the formation of private armies or the privatization of war. By definition, private companies seek the greatest possible profit and their interests are very different from the State's. Instead, the international community should offer support and cooperation to enable States to form professional armies and security forces trained in both technical areas and in respect for the rules of international humanitarian law and human rights.

48. Consequently, clear legal norms are required which specify the areas in which private military and security companies can legitimately operate and those in which their intervention should be prohibited. Such regulations should be established at the national, regional and international levels. Domestic legislation should take into account the particular situation of each country and respect the principles of the free market and free enterprise, without going to the extreme of considering, in the name of globalization, everything to be legitimate and permitted. It should also respect the

principles of State sovereignty, self-determination of peoples and non-intervention in the internal affairs of States.

49. The Special Rapporteur proposes that the activities of military and security companies should be regulated, limiting their activities in this field to areas that are not inherent to the very existence of States, while not actually prohibiting the existence of such companies. Any law or regulatory mechanism must prohibit the hiring and formation of armed units composed of mercenaries.

50. At the same time, and in addition to regulations at the national level, the international community should attempt to strengthen regional security mechanisms. Such arrangements are preferable because they are regulated by clear legal provisions, act in accordance with a transparent line of command and are fully responsible for any violations of international humanitarian law or human rights. They are also familiar with the territory and the peoples where they operate. It is possible that the interests of private companies, which are motivated primarily by profit, could run counter to peace and democracy and could more likely be oriented towards the perpetuation and even escalation of conflicts.

51. Allowing the formation of private armies, the privatization of war or the establishment of paramilitary groups made up of mercenaries will only mean leaving civilian populations without protection and with little or no chance for peace and democracy, hence opening the way to domination and discrimination.

V. Current status of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries

52. Although the International Convention against the Recruitment, Use, Financing and Training of Mercenaries was adopted by the General Assembly in its resolution 44/34 of 4 December 1989, nearly 11 years ago, it has still not entered into force. Nevertheless, 20 States have either ratified or acceded to it. This means that it requires ratification or accession by only two more States to enter into force. That fact is important in itself, since it would give

mankind yet another international instrument for the protection of human rights.

53. However, despite the objections to article 1 and other articles, the Special Rapporteur believes that it would be easier to improve this important instrument if it were to enter into force in the near future. Therefore, its early entry into force should be encouraged.

54. The early entry into force of the International Convention could be the starting point in efforts to address recent mercenary activities that have remained unpunished. It would expand international regulation of the question and confirm the legal nature of the resolutions and declarations of United Nations bodies condemning mercenary activities. It would facilitate preventive cooperation among States, better identification of situations involving mercenaries and the clear determination of jurisdiction in each case and will facilitate procedures for the extradition of mercenaries and the effective prosecution and punishment of offenders.

55. As noted above, 20 States have completed the formal process of expressing their willingness to be bound by the International Convention. Those States are: Azerbaijan, Barbados, Belarus, Cameroon, Croatia, Cyprus, Georgia, Italy, Maldives, Mauritania, Qatar, Saudi Arabia, Senegal, Seychelles, Suriname, Togo, Turkmenistan, Ukraine, Uruguay and Uzbekistan. Nine other States have signed the International Convention, but have not yet ratified it. They are: Angola, Congo, Democratic Republic of the Congo, Germany, Morocco, Nigeria, Poland, Romania and Yugoslavia.

VI. Conclusions

56. No significant progress has been observed in cutting down the number of mercenary activities, which are carried out in particular through armed conflicts where some or all of the parties hire mercenaries to boost their military might and capacity to do damage.

57. The Special Rapporteur's mandate includes the follow-up to his visit to Cuba in 1999 to investigate the mercenary attacks on Cuba in 1997. The persons and entities outside Cuba that participated in the planning, preparation, cover-up and financing of the attacks have yet to be prosecuted and punished in their countries of residence.

58. Various African countries continue to be affected by armed conflicts involving mercenaries. The interests of third parties, particularly their desire to control the valuable natural resources of African countries, are the causes of instability and armed conflicts in which mercenaries are used.

59. The limitations and shortcomings of the legal definition of mercenaries have been underscored by the fact that the number of mercenary activities has not diminished and that international efforts to prevent and prosecute such activities have been inadequate. The international community needs to urgently focus on drafting a more effective definition.

60. In view of the persistence of mercenary activities, the General Assembly should continue to condemn these wrongful acts because they impede the exercise of the right of peoples to self-determination, undermine the sovereignty of States and the principle of non-interference in internal affairs, impede the enjoyment of the human rights of the victims of such aggression and destabilize legitimate constitutional Governments.

61. The methods used to recruit mercenaries by private companies that offer security services and military assistance and advice in the international market should continue to be kept under review. Not all private companies recruit mercenaries, but the novelty of the offer, the efficiency promised in situations that used to be exclusively reserved for State action, and the fact that such companies are at the same time multifaceted, versatile and technologically well equipped, could well draw them into intervening directly in armed conflicts of the countries with which they have signed contracts. The temptation, under such a scenario, of recruiting mercenaries to carry out such interventions is an inescapable reality.

62. The available data indicate that, as a result of the activities of such companies, the supply of mercenaries has increased. However, the prevailing view does not favour allowing the play of market forces to determine the demand and supply of mercenaries; rather, it appears to support the idea that companies that offer military security services on the international market should be regulated and monitored by the international community in order to prohibit the hiring of mercenaries to fight in armed conflicts.

63. Nearly 11 years have passed since the General Assembly adopted the International Convention against the Recruitment, Use, Financing and Training of

Mercenaries, yet only 20 States have so far agreed to be bound by it. Ratification of the Convention by only two more States is needed to meet the requirement for its entry into force.

VII. Recommendations

64. In view of the continuation of mercenary activities in various areas of ongoing armed conflict in African countries, together with the variety of forms used without changing the mercenary nature of the interventions, and the fact that, in addition to the profit motive, the presence of mercenaries and their paymasters is primarily intended to either control policy or play a dominant political role that guarantees access to Africa's natural resources, especially diamonds and oil, the General Assembly should, in addition to condemning mercenary activities, declare its willingness to strengthen all those national, regional and international mechanisms that could be used to put an end to the presence of mercenaries in Africa. The Assembly should also call for the establishment of a system to provide special protection for Africa's natural resources.

65. It is recommended that, in view of the problems involved in coming up with a legal definition of mercenaries and a lack of legislation providing for the definition, prevention and punishment of mercenary activities, the General Assembly should reiterate that priority should be given to convening the meetings of experts and other mechanisms it has already provided for to consider and make proposals on the subject so that, in coordination with the Special Rapporteur, suggestions and proposals concerning the legal definition of mercenaries, amendments to international instruments on the subject and studies on the extent and regulation of the private offer of military security services on the international market may be made available as soon as possible.

66. In that regard, the General Assembly should recall that its previous resolutions with respect to publicizing, including through pamphlets, the adverse effects of the activities of mercenaries on the enjoyment of human rights and on the right to self-determination have not yet been implemented.

67. In view of the tragic experience of Cuba as a result of the attacks perpetrated against it in 1997 by mercenaries recruited, trained, financed and directed

from outside Cuba, and the experiences of other countries that have also been victims of mercenary attacks prepared and directed from abroad, the General Assembly should remind all Member States that their territories may not be used to recruit or train mercenaries or to finance mercenary operations to be implemented later in other countries, resulting in the loss of life, damage to facilities and disruption of security in general; that States are under the obligation to prohibit, prosecute and punish all mercenary activities and investigate, punish or extradite, if necessary, perpetrators or masterminds of mercenary attacks who seek refuge in the territory of a country other than the affected country.

68. Lastly, the General Assembly should encourage its Member States to accede to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries in order for it to come into force as soon as possible.